130 IBLA 234

YELLOW ASTER MINING AND MILLING CO.

IBLA 92-504 Decided August 5, 1994

Appeal from a decision of the California State Office, Bureau of Land Management, declaring placer mining claims null and void ab initio in part. CAMC 227214, et al.

Affirmed as modified.

1. Mining Claims: Lands Subject to

> To the extent that placer mining claims are located on land that has been patented without a reservation of minerals to the United States, they are properly declared null and void ab initio.

APPEARANCES: H. Byron Mock, Esq., for appellant.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Yellow Aster Mining and Milling Company has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated May 20, 1992, declaring placer mining claims null and void ab initio in part. 1/

On July 3, 1989, copies of notices of location were filed with BLM for 26 unpatented mining claims. Those claims are situated in secs. 34 and 35, T. 29 S., R. 40 E., and secs. 2 and 3, T. 30 S., R. 40 E., Mount Diablo Meridian.

BLM's decision states:

> The official records of this office show that a portion of section 35 in T. 29 S., R. 40 E., was patented under Mineral Entry patent 44476 dated September 25, 1906, and Mineral Entry patent 459602 dated February 25, 1915, and a portion of sections 2 and 3 in T. 30 S., R. 40 E., were patented under Mineral Entry patent 33243 dated December 3, 1900, Mineral Entry patent 33500

1/ The following placer mining claims are involved: CAMC-227214, CAMC-227215, CAMC-227220, CAMC-227226, CAMC-227227, CAMC-227228, CAMC-227232, and CAMC-227234.

> dated February 23, 1901, Mineral Entry patent 44479 dated October 20, 1906, and Mineral Entry patent 585914 dated May 24, 1917. The patents are without a reservation of minerals to the United States. Therefore the lands were closed to the location and entry of mining claims on the dates the patents were issued and remained closed on the dates of attempted location.
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> Accordingly, those portions of Yellow Aster No. 2, No. 3, No. 4 and # 8 placer mining claims (CAMC 227226-28 and CAMC 227232) lying within patents 44476 and 459602 are hereby declared null and void ab initio -- without legal effect from the beginning.
>
> As to the lode mining claims on Attachment "A", you are hereby advised that for those portions lying within the patented lands, no mineral or surface rights have been acquired. Mining and mining-related operations on that portion of the claims in the areas not open to mineral entry will constitute a trespass and may subject you or the operator to legal action by the surface owners.

[1] As BLM held, and as appellant acknowledges, a placer mining claim located on patented lands is null and void ab initio. Estate of Steve Penderson, 118 IBLA 210 (1991). This is equally true where only a portion of the placer claim is located on lands patented without a reservation of minerals to the United States. Placer mining claims partially located on lands patented without a reservation of minerals to the United States are properly declared null and void to the extent they include such lands. Seth M. Reilly, 112 IBLA 273, 275-76 (1990); Kenneth Russell, 109 IBLA 180, 183 (1989); Santa Fe Resources, 106 IBLA 374 (1989); Donald E. Stewart, 104 IBLA 48, 49 (1988); Merrill G. Memmott, 100 IBLA 44, 46 (1987); Leslie Corriea, 93 IBLA 346, 349 (1986); Lynn M. Sheppard, 90 IBLA 23, 25, 92 I.D. 612, 614 (1985). Thus, those portions of the placer claims listed in BLM's decision that are situated on patented lands were properly declared null and void ab initio. Seth M. Reilly, 112 IBLA 273, 275 (1990).

Appellant objects to the "hidden impact" of BLM's decision on the claims in question and argues that BLM should not have issued a decision because the claims do not overlap Federal lands, such as where lands are withdrawn from mineral entry. 2/ Appellant requested that we rule that

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2/ It is not clear what that impact would be, other than to clarify the proper extent of the legal interest created by the mining claims. BLM has explained to appellant that its decision did not declare any of its placer claims null and void in their entirety, but only portions of those named. Further, it explained that, if the decision stands, appellant would still have each claim in the decision, but the acreage will merely be reduced to properly specified the extent of the interest. Appellant does not argue that it is entitled to any portion of its placer claims that do cover patented lands. BLM's decision is being modified herein to clarify that it does not affect appellant's lode claims.

"[t]he Decision by the BLM on May 20, 1992, * * * confirmed the legal status of the portion of the unpatented claims that overlapped previously patented land, and neither added to or decreased the legal status of such unpatented claims" (Statement of Reasons at 2-3).

It is proper for BLM to issue a decision in these circumstances. We have affirmed numerous decisions, cited above, issued in similar circumstances. BLM is obliged by section 301(b) of the Federal Land Policy and Management Act of 1976 to carry out the functions, powers, and duties relating to administration of the public land laws. 43 U.S.C. § 1731(b) (1988). These obligations necessarily include determining the extent of the public lands over which it has authority.

Furthermore, inherent in BLM's management authority is the ability to reject as invalid placer claims made under Federal law for lands that are not within the Federal domain. By filing copies of notices of location for lands that were patented without reservation of mineral interest, appellant gave notice that it had made a claim under the Mining Law of 1872 for lands that are not Federally owned. It is by no means overreaching for BLM to hold that portions of claimed land are not public land and thus unavailable for placer mining claims, and to reject those claims as invalid. Accordingly, we decline appellant's invitation to hold that BLM's decision did not decrease the legal status of the unpatented placer claims. To the extent that those placer claims purported to claim patented lands, they were properly modified to show that they cover only Federally-owned lands. 3/

Although we affirm BLM's decision as to the placer claims, we modify it to clarify that it has no effect on appellant's lode claims. The decision does not expressly declare the lode claims null and void. The paragraph concerning the lode claims fall short of taking adverse action against those claims, but merely warns claimants that mining and mining-related operations on that portion of the claims not open to mineral entry would constitute a trespass and subject the claimant or its operator to legal action by the surface owner. 4/ Nevertheless, to the extent that BLM's decision might be regarded as declaring the lode claims null and void ab initio as far as they cross patented lands, it is hereby modified to remove that impression.

3/ We do not comment on whether this results in a "decreased legal status" for the claims.

4/ BLM is cautioned that the boundaries of a lode claim may be extended onto land not subject to location for the purpose of claiming the free and unappropriated ground within and beyond the boundaries. See Del Monte Mining & Milling Co. v. Last Chance Mining & Milling Co., 171 U.S. 55 (1898); Santa Fe Mining, Inc., 79 IBLA 48 (1984). Lands patented under the mining laws may be subject to extralateral rights of a junior lode claim. See Lindley on Mines, § 611.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

David L. Hughes,
Administrative Judge

I concur:

James L. Byrnes,
Chief Administrative Judge